

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM ____

REPORT TO CABINET

25 JUNE 2015

REPORT OF CORPORATE
MANAGEMENT TEAM

CABINET DECISION

Leader of the Council – Councillor Cook

Access, Communities and Community Safety - Lead Cabinet Member – Councillor S Nelson

REGULATION OF INVESTIGATORY POWERS ACT 2000 (“RIPA”)

1. Summary

The purpose of the report is to provide feedback regarding the Office of Surveillance Commissioners (“OSC”) inspection which took place on 9 April; to confirm the Council’s revised Corporate Policy and Procedures Document; to affirm the changes to the Council’s Authorising Officers and the role of senior responsible officer and to receive details of the surveillance activity carried out during 2014/15.

2. Recommendations

It is recommended that Cabinet:-

1. Notes the outcome of the OSC inspection which took place on 9 April 2015 and the action proposed to implement its recommendations;
2. Confirms the RIPA Corporate Policy and Procedures Document as revised following the OSC inspection;
3. Affirms the changes to the Council’s Authorising Officers and the continuing role of the Director of Law and Democracy as the senior responsible officer for RIPA;
4. Notes the details relating to RIPA activity carried out during 2014/15.

3. Reasons for the Recommendations

The report and recommendations will ensure that Members are aware of the outcome of the OSC inspection and its implications for the Council’s corporate policy and procedures, and that the Authority’s arrangements regarding RIPA meet legislative requirements and Home Office good practice guidance.

4. Members' Interests

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

Disclosable Pecuniary Interests

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code)

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SUMMARY

The purpose of the report is to provide feedback regarding the Office of Surveillance Commissioners (“OSC”) inspection which took place on 9 April 2015; to confirm the Council’s Corporate revised Policy and Procedures Document; to affirm the changes to the Council’s Authorising Officers and the role of the senior responsible officer and to receive details of the surveillance activity carried out during 2014/15.

RECOMMENDATIONS

It is recommended that Cabinet:-

1. Notes the outcome of the OSC inspection which took place on 2 April 2015 and the action proposed to implement its recommendations;
2. Confirms the RIPA Corporate Policy and Procedures Document as revised following the OSC inspection;
3. Affirms the changes to the Council’s Authorising Officers and the continuing role of the Director of Law and Democracy as the senior responsible officer for RIPA;
4. Notes the details relating to RIPA activity carried out during 2014/15.

DETAILS

Background

1. Under RIPA, authorities such as the Council can authorise:-
 - Directed surveillance (e.g. covert camera surveillance) in a manner likely to obtain private information about an individual;
 - A covert human intelligence source (“CHIS”) which is someone who establishes or maintains a personal or other relationship with another individual for the covert purpose of obtaining information; and the
 - Acquisition of communications data (e.g. not the contents of a communication, but information about the use made by a person of any postal or telecommunications service);

2. The only grounds for such authorisations are for the prevention or detection of crime or of preventing disorder.
3. Only certain prescribed officers can sign authorisations (i.e. Director, Head of service, Service manager or equivalent).
4. All authorisations or renewals for directed surveillance in a manner likely to obtain private information about an individual, or use or conduct of a Covert Human Intelligence Source or the acquisition of communications data can only be implemented if judicial approval is first obtained. To date, all applications for judicial approval have been granted.
5. In addition, the directed surveillance crime threshold means that:-
 - Local authorities can only authorise use of directed surveillance under RIPA to prevent or detect criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months' imprisonment **or** are related to the underage sale of alcohol and tobacco. The offences relating to the latter are as follows:-
 - Section 146 of the Licensing Act 2003 (sale of alcohol to Children)
 - Section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children)
 - Section 147A of the Licensing Act 2003 (persistently selling alcohol to children)
 - Section 7 of the Children and Young Persons Act 1933 (sale of tobacco etc to persons under the age of 18)
 - Local authorities **cannot** authorise directed surveillance for the purpose of preventing disorder unless this involves a criminal offence(s) punishable (whether on summary conviction or indictment) by a maximum term of at least 6 months' imprisonment.
 - Local authorities can therefore continue to authorise use of directed surveillance in more serious cases as long as other tests are met – ie that it is necessary and proportionate and where prior approval from a JP has been granted. Examples of cases where the offence being investigated attracts a maximum custodial sentence of 6 months or more could include more serious criminal damage, dangerous waste dumping and serious or serial benefit fraud.
 - Local authorities can also continue to authorise the use of directed surveillance for the purpose of preventing or detecting specified criminal offences relating to the underage sale of alcohol and tobacco where the necessity and proportionality test is met and prior approval from a JP has been granted.
 - A local authority **may not authorise** the use of directed surveillance under RIPA to investigate disorder that does not involve criminal offences or to investigate low-level offences which may include, for example, littering, dog control and fly-posting.

6. An authority exercising RIPA powers must have a corporate policy and procedure to regulate how the powers are exercised and the RIPA activity which takes place.
7. Councillors should review an Authority's use of RIPA and agree the policy at least once a year.
8. Councillors should also consider internal reports on the use of RIPA on at least a quarterly basis, to ensure that it is being used consistently with the policy and the policy remains fit for purpose. They should not however be involved in making decisions on specific authorisations.
9. It is good practice for a senior responsible officer (who should be a member of the Corporate Management Team) to be made responsible for:-
 - the integrity of the process in place within the local authority for the management of CHIS;
 - compliance with Part II of RIPA and with the Code of Practice;
 - oversight of the reporting of errors to the relevant Commissioner and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors;
 - engagement with the Office of the Surveillance Commissioner (OSC) inspectors when they conduct their inspections, where applicable; and
 - ensuring that all authorising officers are of an appropriate standard in light of any recommendations in the inspection reports prepared by the OSC; and
 - where the inspection report highlights concerns about the standards of authorising officers, ensuring the concerns are addressed.
10. The Director of Law and Democracy continues to be the Council's senior responsible officer.

OSC Inspection

11. An inspection by the OSC took place on 9 April 2015. This was conducted by Mr David Buxton, Surveillance Inspector.
12. As a result of the inspection, the Chief Surveillance Commissioner indicated that he was pleased to see that the recommendations made following the inspection 3 years ago had been completed and that good practice is identified in the approach of the Council's senior responsible officer to his responsibilities and in the content of the Council's policy.
13. He also was of the opinion that the Council takes its RIPA responsibilities seriously and achieves a good level of legislative compliance.
14. The surveillance Inspector recommended as follows:

"Recommendation 1 – The Council should review its RIPA policy manual in accordance with the observations made at paragraph 7.2 of this report (regarding urgent authorisations)"

Recommendation 2 – In cases of operations involving test purchases of sales to juveniles, the Council should review its current approach and ensure that in all cases where juveniles are used to make test purchases of alcohol or tobacco, a risk assessment is prepared in relation to the activities of the juvenile and that the role of the supporting adult is considered by the AO and an appropriately informed decision made as to whether or not a directed surveillance authorisation is required.

Recommendation 3 - The council should review its practices with regards to the use of CHIS and ensure that it addresses the observations made in this report at paragraphs 9.9 to 9.12 with regards to risk assessments, the wording of authorisations, and the responsibilities associated with paragraphs 29(5)(a) and 29(5)(b) RIPA (having an officer with day to day responsibility of a CHIS and a different Officer with general oversight of the use made of the source)”

15. The Chief Surveillance Officer has been informed that the Council accepts these recommendations and that the necessary action will be taken to ensure that all of the recommendations are implemented.

RIPA Policy and Procedures Document

16. The Council's policy and procedure document has been reviewed and revised in order to reflect the comments and recommendations referred to in the Inspector's report. This includes revisions to the RIPA authorisation forms. The revised document is accessible at: <https://www.stockton.gov.uk/stockton-council/good-governance-doing-things-properly/surveillance/>

Test Purchase of Sales to Juveniles

17. Trading Standards have reviewed the approach and procedures regarding surveillance in respect of the alleged illicit sale of alcohol and tobacco to underage juveniles, in order to ensure that the appropriate assessments of risk takes place and that the guidance provided by the OSC informs the way in which the surveillance is authorised and is carried out.

The Use of CHIS

18. Again, Trading Standards have re-considered its practices and procedures regarding the use of CHIS, in order to ensure that they address the Inspector's observations in relation to risk assessment for CHIS authorisations; the wording of those authorisations (so that they are not overly restrictive or constraining); and the responsibilities of the CHIS handler (an Officer with day to day responsibility for a CHIS) and the controller (a different Officer with responsibility for the general oversight of the use made of the source).

Authorising Officers

19. The current Authorising Officers are the Chief Executive, the Corporate Director of Resources; the Director of Law and Democracy and the Community Safety Manager. However, as a result of the retirement of the Trading Standards and Licensing Manager in April there was no Officer authorised in relation to Trading Standards and Licensing, the service area responsible for the vast majority of RIPA authorisations and RIPA activity. Accordingly, the Head of Democratic Services, who now has management responsibilities for Trading Standards and Licensing, has been

confirmed as the new Authorising Officer for that service area. Appropriate training has been given and ongoing support will continue to be provided.

RIPA Authorisations / Applications

20. During 2014/15 the following covert surveillance activity took place:-
- Directed Surveillance
The number of directed surveillance authorisations granted during the year:- 1

The number of authorisations in force at the end of the year:- 0
 - CHIS
The number of CHIS recruited during the year:- 2

The number of CHIS authorisations in force at the end of the year:- 1
 - Communications Data (to 31 December 2014)

Number of applications authorised by a Designated Person 1

Number of applications submitted to a Designated Person that were rejected 1

Number of notices requiring disclosure of communications data under Section 21(4) of RIPA 2

Number of authorisations for conduct to acquire communications data under Section 21(4) of RIPA 0
21. Specific details of the RIPA activity that has taken place during 2014/15 are set out in the **Appendix** to this report.
22. Cabinet will, of course, continue to receive such information in the six monthly Finance and Performance reports, and two further quarterly reports, consisting of anonymised RIPA activity information, will be emailed to all Members.

FINANCIAL AND LEGAL IMPLICATIONS

Financial

23. There are no financial implications arising directly from the report.

Legal

24. The Council's policy and procedures document has been reviewed and revised in light of the recent OSC Inspection.

RISK ASSESSMENT

25. Each RIPA authorisation is the subject of a separate, specific risk assessment. RIPA activities generally are considered to be low to medium risk, taking into account the current policy and procedures, together with the oversight arrangements and inspection regime.

COUNCIL PLAN IMPLICATIONS

26. RIPA authorisations and applications are made, when it is necessary and proportionate to do so, in order to assist in the prevention or detection of crime or in preventing disorder. They are therefore relevant to the Authority's community safety objectives. The RIPA policy and procedures are also an inherent element of the Council's organisational effectiveness.

EQUALITY IMPACT ASSESSMENT

27. The report has not been the subject of an Equality Impact Assessment. The policy changes reflect the OSC inspection recommendations.

CONSULTATION

28. The matters referred to in the report have been the subject of prior consultation with relevant Cabinet Members.

Director of Law & Democracy

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<u>Background Papers:</u>	None
<u>Ward(s) and Ward Councillors:</u>	Not Ward specific
<u>Property Implications:</u>	None